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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINTON MAURICE COLLINS,

APPELLANT

APPELLATE CASE NO. 2023-000366

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred in admitting incriminating cellular mapping evidence, where the State had the evidence for several years but only turned it over to defense counsel shortly before trial, since Rule 5, SCRCrimP, requires the prosecution to disclose evidence it intends to use in its case-in-chief?

STATEMENT OF THE CASE

On May 10, 2022, a Pickens County Grand Jury indicted Quinton Collins (Appellant) for murder and attempted armed robbery. Appellant was tried jointly with his codefendant, Tychristian Ladson, before the Honorable Perry H. Gravely and a jury, from February 21 – 24, 2023. Pretrial motions were heard by Judge Gravely on February 17, 2023. Appellant was represented by Kraig Pringle. Ashaley Boatwright and Katelyn Williams represented Ladson. Judith Munson and Katryna Owens prosecuted the case.[1]

The State sought a mandatory life without parole sentence based on Appellant's prior convictions. Appellant was convicted as indicted. He was sentenced to serve concurrent terms of life without the possibility of parole for murder and twenty years for attempted armed robbery.[2]

This appeal follows.

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1 R. *(indictments); Tr. I, 1; Tr. II, 1.

2 Tr. I, 48, ll. 6-11; Tr. II, 673, ll. 5-12; Tr. II, 681, l. 25 – 682, l. 30; R. *(sentence sheets).

STANDARD OF REVIEW

The appellate court analyzes "the circuit court's ruling under an abuse of discretion standard." *State v. Lawton*, 382 S.C. 122, 127, 675 S.E.2d 454, 457 (2009). "A violation of Rule 5 is not reversible unless prejudice is shown." *State v. Landon*, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006). "Admission of evidence falls within the trial court's discretion and will not be disturbed on appeal absent abuse of that discretion." *State v. Colf*, 337 S.C. 622, 625, 525 S.E.2d 246, 247 (2000)).

ARGUMENT

The court erred in admitting incriminating cellular mapping evidence, where the State had the evidence for several years but only turned it over to defense counsel shortly before trial, since Rule 5, SCRCrimP, requires the prosecution to disclose evidence it intends to use in its case-in-chief.

The court should not have permitted the State to sandbag the defense with cellular mapping evidence. The prosecution did not disclose the evidence in time for the defense to have it independently evaluated despite their repeated, specific requests for the information. This was a close case, with which the jury struggled, and Appellant was prejudiced by the erroneous admission.

Relevant facts

At approximately 8:00 p.m. on December 14, 2018, Stacey Branham (Decedent) was shot and killed while she worked, during a botched armed robbery attempt at B Pam's convenience store in Easley. Video surveillance from B Pam's[3] showed two men run into the store: a robber with a white mask and gun, and a robber with an orange mask. The robber with the white mask fired a shot while entering. The robber with the orange mask tried to grab the cash register, but Decedent grabbed her .380 caliber pistol and shot him. Both robbers ran out of the store; the robber with the white mask fired several more shots as he did so. One of the shots struck Decedent in the chest. She died before paramedics arrived.[4]

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[3] State's Exhibit #12 and #13 are video surveillance footage from B Pam's and are on file with this Court.

[4] Tr. II, 60, ll. 3-20; Tr. II, 95, ll. 11-24; Tr. II, 130, l. 22 – 131, l. 3; Tr. II, 106, l. 22 – 107, l. 24; Tr. II, 131, ll. 1-10; State's Exhibit #12; State's Exhibit #13.

William Looper, a former NRA firearms instructor, was driving home from dinner with his wife. As Looper passed by B Pam's, he heard several shots and saw two masked men run out of the convenience store. According to Looper, the men got in a silver Subaru Forester with a vanity plate that possibly ended in the number 1 or letter I. Looper called 911 and began following the men, but he was pulled over by a police officer responding to the crime. The Subaru got away. Law enforcement checked nearby hospitals to see if anyone sought treatment for gunshot wounds, but this did not bear fruit.[5]

Much of the evidence in this case was circumstantial. Thomas Cloer owned a silver Subaru Forester with a vanity plate "Cloer1". In September of 2018, he reported the car stolen. Law enforcement started looking for the car after the murder and found it unlocked in a field about a mile from an apartment complex in Greer. A relative of Appellant's codefendant, Tychristian Ladson, lived in the apartment complex. A Dollar General receipt for a t-shirt was located in the Subaru, and this led officers to find a display of orange ski masks next to the t-shirt display at that Dollar General. DNA was found on the steering wheel of the Subaru. The parties stipulated that: on December 18, 2018, the steering wheel was swabbed; the swab showed a combination of two DNA profiles; "the DNA from the steering wheel of the silver Subaru Forester matched both Tychristian Ladson and Quinton Collins;" and the DNA present "was not blood."[6]

Police had a tip line and put a still image from the video surveillance films on social media. Several people called in to say they thought Appellant was involved. Ryan Collins, a man who "repoed cars" for a living, was at a Spinx gas station the night of December 14th, prior to

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5 Tr. II, 61, l. 17 – 72, l. 17; Tr. II, 240, l. 21 – 241, 23.

6 Tr. II, 97, l. 3 – 98, l. 21; Tr. II, 251, l. 1 – 255, l. 15; Tr. II, 259, l. 21- 261, l. 9; Tr. II, 125, l. 21 – 126, l. 12.

the murder. He noticed two guys in a silver Forester with vanity plates, and something about them "didn't seem right." Ryan Collins was never shown a lineup, but he claimed at trial that he recognized Appellant and Ladson as the men in the Subaru. Darius Rhodes, a man who was awaiting sentencing on voluntary manslaughter, claimed he recognized Ladson's black and white shoes on the surveillance video of the murder, and claimed he knew Ladson to drive a white or silver Subaru in November or December of 2018.[7]

Investigator Hamby questioned Appellant about the murder, and Appellant denied involvement. However, when Hamby showed Appellant a still from the video footage and asked him, "In this picture, what are you grabbing?" Appellant stated: "the register." Appellant also stated he had never been in a Subaru. Hamby asked Appellant to lift his shirt and Hamby checked Appellant's chest for wounds but did not see anything.[8]

Police officers got a court order to search Appellant's body to see if he had a gunshot wound consistent with being shot by Decedent. X-rays taken on February 7, 2019, showed a mass that appeared to be a bullet underneath Appellant's skin in his upper back. Authorities wanted to remove the bullet and check to see if it came from Decedent's gun. Appellant was seen by Dr. Strathern on November 11, 2019, and Dr. Strathern observed a mass below the skin. According to Dr. Strathern, Appellant did not want the bullet removed. On September 25, 2020, Appellant was seen again by Dr. Strathern and the bullet was gone. It appeared to have been removed; only scar tissue remained.[9]

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7 Tr. II, 203, l. 11 – 204, l. 22; Tr. II, 279, l. 2 – 285, l. 23; Tr. II, 295, l. 9 – 300, l. 10; Tr. II, 302, ll. 11-21; Tr. II, 360, l. 7 – 367, l. 2.

8 Tr. II, 486, l 20 – 489, l. 18; Tr. II, 493, l. 14 – 495, l. 4.

9 Tr. II, 158, l. 17 – 159, l. 7; Tr. II, 552, l. 13 – 554, l. 2; Tr. II, 325, l. 14 – 347, l. 3.

A major part of the State's case against the defendants was cellular telephone data and mapping. Records showed Appellant's phone and Ladson's phone were in contact via voice calls on the date of the murder. This was shown by call detail records. However, a T-Mobile records custodian would explain the cell phone carrier could not verify the accuracy of certain other records, the timing advance records.[10]

Critically, cell phone mapping showed both Appellant's phone and Ladson's phone were in locations consistent with committing the crime. Brian Swafford testified that by using call records, including timing advance records, and plugging them into a "ZetX" internet-based program, he determined that both phones were in separate locations in the Upstate earlier in the day. Then the two phones began moving closer to each other, and by 7:24 p.m., they began hitting on the same tower. By 7:56 p.m., both phones were in downtown Easley, again hitting on the same tower. By 8:20 p.m., both phones were back in Greenville. (The murder occurred at approximately 8:00 p.m. and it only took seconds.) The maps and timing records were admitted.[11]

Trial began February 21, 2023. On February 10, 2023, the State disclosed cellular maps for both defendants. It also disclosed timing advance records for Appellant, which had been used by Swafford to create the maps. Pretrial, defense counsel[12] moved to exclude the mapping-

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10 Tr. II, 212, l. 13 – 213, l. 1; Tr. II, 255, l. 24 – 257, l. 3; Tr. II, 426, ll. 10-15; Tr. II, 429, l. 12 – 430, l. 8; Tr. II, 381, ll. 5-9; Tr. II, 397, l. 15 – 399, l. 14.

11 Tr. II, 421, l. 14 – 438, l. 19. State's Exhibit #25 is the packet of fifty-six maps that were admitted. State's Exhibit #25 is on file with this Court. State's Exhibit #23 is the timing advance records for Appellant's phone; these records are located at pp. * of the Record on Appeal.

12 Parts of the argument were made by Appellant's counsel and parts were made by the codefendant's counsel. However, Appellant's counsel clarified that he was joining in the motions of the codefendant's counsel. Tr. I, 16, ll. 14-19.

related evidence. The defense noted the evidence had been in the State's possession since 2019, and stated *it had specifically requested this discovery several times, so that an expert could independently review it.*

> We did have an expert that analyzed records. The State was aware, which is why we were specifically, asking for specific things in our – in our emails that were sent. And when we got nothing in return – and that was part of the reason for the continuance in October was to get those records. And we still never got them. By – by dumping them on us at this last minute, we haven't had time to analyze and verify . . .

"[W]e, specifically, requested [those records] four times[.]" The defense had no time to investigate the newly-disclosed evidence. "[W]e don't have the ability to even go and check on that and try to investigate further to maybe undermine it, or – or find issues with it." The defense noted the information was new in that it showed the defendants were "near the incident location during the time of the incident."[13]

The solicitor conceded the mapping evidence newly provided to the defense consisted of "images that then-deputy Brian Swafford prepared through a program that the Pickens County Sheriff's Office uses to take call detail records provided by phone companies and convert the data on the call detail record spreadsheets into a visual representation of where the actual cell phone towers identified in the call detail records are implicated." The prosecutor admitted the mapping evidence had been in possession of the Easley Police Department since 2019. Surprisingly, the solicitor argued that the mapping evidence had already been provided since, according to the prior solicitor, the prior defense lawyer, a "Mr. Watson," "had already viewed this information. I say all that to say this is not new material." The prosecutor did not deny that

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13 Tr. I, 17, l. 2 – 18, l. 18; Tr. I, 19, ll. 16-24; Tr. I, 20, ll. 2-8; Tr. I, 24, ll. 18-22; Tr. I, 25, ll. 10-25; Tr. I, 27, l. 21 – 28, l. 11; Tr. II, 28, ll. 2-11; Tr. I, 18, ll. 1-7.

the current attorneys had asked for this information repeatedly. Instead, the prosecutor argued, "Rule 5 requires the State to share discovery with *the Defendant*." The solicitor disputed that the timing advance records (as opposed to the maps) had just been shared; she stated the timing advance records were provided in April of 2019.[14]

The court asked, "Well, I mean, what obligation does the State have once they've released discovery to an attorney and there's a new attorney? I mean, aren't y'all kind of bound by that?"[15]

The defense argued "as far as it being released to a prior attorney, that doesn't mean that its been released to us and we've had the opportunity to see it and analyze it." Defense counsel noted the State had an "obligation" to timely disclose the evidence, and that the evidence was new to him and to the codefendant's lawyer. "They need to turn over everything in a timely basis."[16]

The court ruled, "As to the – the mapping, we're just talking about the mapping area. I'm going to find – based on the history that it has been provided, I'm going to deny your motion to suppress the maps relating to the cell phone calls." The judge ruled the timing advance records were also admissible.[17]

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14 Tr. I, 20, l. 18 – 22, l. 18; Tr. I, 24, ll. 6-13; Tr. I, 26, ll. 12-15 (emphasis added).

15 Tr. I, 13, ll. 1-4.

16 Tr. I, 22, l. 23 – 23, l. 23; Tr. I, 25, ll. 22-25

17 Tr. I, 28, ll. 12-16; Tr. I, 40, ll. 3-24.

This was not an open and shut case. The assailants were masked. No physical evidence placed Appellant or his codefendant at the crime scene. The jury struggled with the case, deliberating for approximately six hours, and asking five questions.[18]

Discussion

The maps and related timing advance records were in the possession of the prosecution, intended for use as evidence in chief, and the defense had repeatedly requested them. The case had been continued for the State to provide these records to the defense, yet the State failed to timely do so. It was error to allow them to proceed with this evidence and sandbag the defense with it. "The requirements of Rule 5 . . . are judicially created discovery mechanisms for use in criminal proceedings." *State v. Kennerly*, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct. App. 1998), *aff'd*, 337 S.C. 617, 524 S.E.2d 837 (1999). Rule 5(a)(1)(c), SCRCrimP, requires:

> Upon request of the defendant **the prosecution shall permit the defendant to inspect and copy books, papers, documents, photographs**, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are **intended for use by the prosecution as evidence in chief at the trial**, or were obtained from or belong to the defendant.

(emphasis added). "This rule clearly applies to evidence within the actual possession of the prosecution and seems to also apply to evidence within the possession of other government agencies." *Kennerly*, 331 S.C. at 453, 503 S.E.2d at 220 (citing *State v. Gulledge*, 326 S.C. 220, 227, 487 S.E.2d 590, 594 (1997)). Subsection (a)(3) of Rule 5 specifies the "prosecution shall respond to the defendant's request for disclosure no later than thirty (30) days after the request is made, or within such other time as may be ordered by the court." The prosecution was in possession of this critical cell phone location evidence (mapping and timing advance evidence

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18 Tr. II, 119, ll. 22-25; Tr. II, 663, l. 20 – 672, l. 24.

used to create the maps) and the defense was not. Rule 5(a)(1)(c) required the State to turn it over since they intended to use it in their case-in-chief.

The State was under a continuing duty to disclose. "If, prior to or during trial, a party discovers additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional evidence or material." Rule 5(c), SCRCrimP. The State's argument that it already turned the evidence over by providing it to prior defense counsel is meritless. The State's obligations under Rule 5 were nondelegable: it could not rely on a prior defense lawyer to fulfill its own obligations. The *prosecution* was obliged to turn the evidence over to Appellant's defense counsel, Mr. Pringle.

As the defense explained during arguments on the motion, it had repeatedly asked for this evidence, and the case had even been continued to get it. Assuming *arguendo* that disclosure to a prior lawyer could suffice under Rule 5, it was insufficient here, where the defense repeatedly requested this exact evidence from the prosecution. The court's ruling, that it denied the motion "based on the history that it has been provided," was error. Rule 5(c), SCRE. *See also* Rule 3.4(d), RPC, Rule 407, SCACR (lawyer shall not, in pretrial procedure, "fail to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party").

The logically inconsistent position the State concomitantly took, that it did not have to turn the evidence over at all, is also meritless. The evidence was covered by Rule 5—the State had to turn the evidence over because it intended to use the evidence in its case-in-chief. Rule 5(a), SCRE.

The court should have excluded the evidence. "[I]f a party fails to comply with Rule 5, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing the undisclosed evidence, or it may enter such other order as it deems just under the circumstances." *State v. Trotter*, 322 S.C. 537, 542, 473 S.E.2d 452, 455 (1996). *See* Rule 5(d)(2), SCRCrimP (If "a party has failed to comply with this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or it may enter such other order as it deems just under the circumstances.").

Without timely access to the evidence, the defense was unable to obtain an independent evaluation of its validity. *See Ard v. Catoe*, 372 S.C. 318, 332, 642 S.E.2d 590, 597 (2007) ("with the assistance of appropriate experts, counsel should aggressively re-examine all of the government's forensic evidence, and conduct appropriate analyses of all other available forensic evidence") (cleaned up); *State v. Wallace*, 440 S.C. 537, 546 n. 5, 892 S.E.2d 310, 314 (2023) (cell site location information-based testimony is "technical or specialized knowledge, subject to Rule 702"); *State v. Warner*, 430 S.C. 76, 82-84, 842 S.E.2d 361, 364 (Ct. App. 2020), *aff'd in part and remanded*, 436 S.C. 395, 872 S.E.2d 638 (2022) (FBI Agent qualified as expert in historical cell site analysis and cell phone record analysis had over 800 hours of training in CSLI, including training by all major cell phone carriers with their compliance personnel and network engineers").

"Once a Rule 5 violation is shown, reversal is required only where the defendant suffered prejudice from the violation. *Kennerly*, 331 S.C. at 453–54, 503 S.E.2d at 220 (citing *Trotter*, *supra*; *State v. Wilkins*, 310 S.C. 81, 84, 425 S.E.2d 68, 70 (Ct. App. 1992)). Appellant could not effectively gauge the accuracy of the evidence, which was used to link him to the crime. Nor

could he test the evidence before the jury with expert testimony about the validity of this information. Appellant was prejudiced—as seen, the jury struggled with the case. There was no physical evidence placing Appellant at the crime scene, and the State used the incriminating cellular mapping evidence to do that. This Court should reverse. Rule 5, SCRE; *Kennerly*, 331 S.C. at 453–54, 503 S.E.2d at 220.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.

Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of December, 2023.